BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	)
	)
Jerome PEYRELEVADE et al.	) Group Art Unit: 3627
	)
Application No.: 10/024,352	) Examiner: Michael A. Cuff
	)
Filed: December 21, 2001	) Confirmation No.: 4684
	)
For: SHOP-IN-SHOP WEBSITE	)
CONSTRUCTION	)

Mail Stop Appeal Brief--Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

TRANSMITTAL OF APPEAL BRIEF (37 C.F.R. 41.37)

Transmitted herewith is the APPEAL BRIEF in this application with respect to the

Notice of Appeal filed on October 15, 2007.

This application is on behalf of

☐ Small Entity ☒ Large Entity

Pursuant to 37 C.F.R. 41.20(b)(2), the fee for filing the Appeal Brief is:

☐ $255.00 (Small Entity)

☒ $510.00 (Large Entity)

TOTAL FEE DUE:

Appeal Brief Fee	$510.00
Extension Fee (if any)	$120.00
Total Fee Due	$630.00

☒ The fee total of $630.00 is submitted herewith.

PETITION FOR EXTENSION. If any extension of time is necessary for the filing of this Appeal Brief, and such extension has not otherwise been requested, such an extension is hereby requested, and the Commissioner is authorized to charge necessary fees for such an extension to Deposit Account No. 06-0916.

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.

Dated: January 8, 2008

By: _____
Anthony M. Gutowski
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PATENT
Customer No. 22,852
Attorney Docket No. 05725.0984-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Sir:

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

This is an appeal to the Board of Patent Appeals and Interferences ("the Board")

from the Final Office Action dated August 9, 2007, ("Final Office Action"), rejecting

claims 17, 18, 25-27, 34, 36, and 38, in the above-referenced patent application.

Pursuant to 37 C.F.R. § 41.37, Appellants submit this Appeal Brief and enclose

herewith the required fee of $510.00 under 37 C.F.R. § 41.20(b)(2).

A Notice of Appeal was filed on October 15, 2007. This Appeal Brief is being

filed concurrently with a petition for one-month extension of time. If any additional fees

are required, or if the enclosed payment is insufficient, Appellants request that the

required fees be charged to Deposit Account No. 06-0916.

I.   Real Party In Interest

The real party in interest is L'Oréal S.A., the assignee of the entire right, title, and interest in the application, as indicated by assignment duly recorded in the U.S. Patent and Trademark Office, beginning at Reel 013047, Frame 0974, on June 26, 2002.

II.   Related Appeals and Interferences

Appellants, Appellants' legal representative, and Assignee are aware of no other appeals, interferences, or judicial proceedings that may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

III.   Status Of Claims

Claims 19, 35, 37, and 39 were previously canceled. Claims 1-18, 20-34, 36, and 38 are pending in this application. Claims 1-16, 20-24, and 28-33 were withdrawn from consideration as being non-elected. Claims 17, 18, 25-27, 34, 36, and 38, as set forth in the Claims Appendix, were rejected in the Final Office Action and the rejections applied to those claims are at issue in this appeal.

IV.   Status Of Amendments

No amendments have been filed subsequent or in response to the Final Office
Action.

V.   Summary Of Claimed Subject Matter

A. Independent claim 17

Independent claim 17 recites a method for enabling components of a supplier's website to be integrated into a website of a reseller. The method comprises enabling alternative functionality in the supplier's web site and in the reseller's website using at least one common module containing a first set of information for incorporation into the supplier's website, an alternative second set of information for incorporation into the reseller's website, and a third set of common information for incorporation into both the supplier's and the reseller's website, wherein the alternative functionality includes displaying identifying information unique to each of the supplier and the reseller, the first set of information including identifying information relating to a product supplied by the supplier and unique to the supplier, and the second set of information including identifying information relating to the product supplied by the supplier and unique to the reseller. FIG. 1, item 1200; page 8, lines 14-23; page 10, line 16 - page 11, line 3[1].

The method also comprises enabling assignment of at least first and second addresses to the module, such that when the module is called in the supplier's website by the first address, the first and third sets of information are caused to be incorporated into the supplier' s web site while the second set of information is prevented from being incorporated into the supplier's website, and when the module is called in the reseller's web site by the second address, the second and third sets of information are caused to

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[1] The designations of reference numerals and identifications of portions of the specification and drawings in this Brief are merely intended to facilitate explaining how the originally-filed application provides exemplary disclosure relating to the claimed subject matter. These designations and references are exemplary and non-exhaustive, and they should not be construed as limiting the claims.

be incorporated into the reseller 's website while the first set of information is prevented

from being incorporated into the reseller's website. FIG. 1, item 1300; page 9,

lines 1-12; page 11, line 4 - page 12, line 9. The method further comprises making the

module available for use in constructing the supplier's and reseller's web sites, such

that, using the same module, the supplier and the reseller web sites may incorporate

common information while at the same time being customized. FIG. 1, item 1400;

page 9, line 13 - page 10, line 8; page 12, lines 10-20.

B. Independent claim 25

Independent claim 25 recites a system for enabling components of a supplier's

web site to be integrated into a website of a reseller. The system comprises means for

enabling alternative functionality in the supplier's web site and in the reseller's website

using at least one common module containing a first set of information for incorporation

into the supplier's website, an alternative second set of information for incorporation into

the reseller's website, and a third set of common information for incorporation into both

the supplier's and the reseller's website, wherein the alternative functionality includes

displaying identifying information unique to each of the supplier and the reseller, the first

set of information identifying information relating to a product supplied by the supplier

and unique to the supplier, and the second set of information including identifying

information relating to the product supplied by the supplier and unique to the reseller.

This is a means-plus-function recitation and the corresponding structure, material, or act

is disclosed in FIG. 1, item 1200; page 8, lines 14-23; page 10, line 16 - page 11, line 3;

page 16, lines 10-11.

The system also comprises means for enabling assignment of at least first and second addresses to the module, such that when the module is called in the supplier's website by the first address, the first and third sets of information are caused to be incorporated into the supplier's web site while the second set of information is prevented from being incorporated into the supplier's website, and when the module is called in the reseller's web site by the second address, the second and third sets of information are caused to be incorporated into the reseller's website while the first set of information is prevented from being incorporated into the reseller's website. This is a means-plus-function recitation and the corresponding structure, material, or act is disclosed in FIG. 1, item 1300; page 9, lines 1-12; page 11, line 4 - page 12, line 9; page 16, line 11 - page 17, line 8.

The system further comprises means for making the module available for use in constructing the supplier's and reseller's web sites, such that, using the same module, the supplier and the reseller web sites may incorporate common information while at the same time being customized. This is a means-plus-function recitation and the corresponding structure, material, or act is disclosed in FIG. 1, item 1400; page 9, line 13 - page 10, line 8; page 12, lines 10-20; page 17, line 9-18.

C. Independent claim 26

Independent claim 26 recites a system for enabling components of a supplier's web site to be integrated into a website of a reseller. The system comprises at least one memory including code enabling alternative functionality in the supplier's web site and in the reseller's website using at least one common module containing a first set of information for incorporation into the supplier's website, an alternative second set of

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information for incorporation into the reseller's website, and a third set of common

information for incorporation into both the supplier's and the reseller's website, wherein

the alternative functionality includes displaying identifying information unique to each of

the supplier and the reseller, the first set of information including identifying information

relating to a product supplied by the supplier and unique to the supplier, and the second

set of information including identifying information relating to the product supplied by the

supplier and unique to the reseller. FIG. 1, item 1200; FIG. 3, item 3305; page 8,

lines 14-23; page 10, line 16 - page 11, line 3; page 16, lines 10-11; page 18,

lines 14-18.

The memory also includes code enabling assignment of at least first and second

addresses to the module, such that when the module is called in the supplier's website

by the first address, the first and third sets of information are caused to be incorporated

into the supplier' s web site while the second set of information is prevented from being

incorporated into the supplier's website, and when the module is called in the reseller's

web site by the second address, the second and third sets of information are caused to

be incorporated into the reseller 's website while the first set of information is prevented

from being incorporated into the reseller's website. FIG. 1, item 1300; FIG. 3,

item 3305; page 9, lines 1-12; page 11, line 4 - page 12, line 9; page 16,

line 11 - page 17, line 8; page 18, lines 14-18.

The memory further includes code for making the module available for use in

constructing the supplier's and reseller's web sites, such that, using the same module,

the supplier and the reseller web sites may incorporate common information while at the

same time being customized. FIG. 1, item 1400; FIG. 3, item 3305; page 9,

line 13 - page 10, line 8; page 12, lines 10-20; page 17, lines 9-18; page 18, lines 14-18.

The system also comprises at least one processor for executing said code.

Page 18, lines 14-18; page 21, lines 1-2.

D. Independent claim 27

Independent claim 27 recites a computer program product for enabling

components of a supplier's web site to be integrated into a website of a reseller. The

computer program product comprises code enabling alternative functionality in the

supplier's web site and in the reseller's website using at least one common module

containing a first set of information for incorporation into the supplier's website, an

alternative second set of information for incorporation into the reseller's website, and a

third set of common information for incorporation into both the supplier's and the

reseller's website, wherein the alternative functionality includes displaying identifying

information unique to each of the supplier and the reseller, the first set of information

including identifying information relating to a product supplied by the supplier and

unique to the supplier, and the second set of information including identifying

information relating the product supplied by the supplier and unique to the reseller.

FIG. 1, item 1200; FIG. 5, item 5300; page 8, lines 14-23; page 10, line 16 - page 11,

line 3; page 16, lines 10-11; page 23, lines 21-22; page 26, line 15 - page 27, line 8.

The computer program product also comprises code enabling assignment of at

least first and second addresses to the module, such that when the module is called in

the supplier's website by the first address, the first and third sets of information are

caused to be incorporated into the supplier's web site while the second set of

information is prevented from being incorporated into the supplier's website, and when the module is called in the reseller's web site by the second address, the second and third sets of information are caused to be incorporated into the reseller's website while the first set of information is prevented from being incorporated into the reseller's website. FIG. 1, item 1300; FIG. 5, item 5400; page 9, lines 1-12; page 11, line 4 - page 12, line 9; page 16, line 11 - page 17, line 8; page 23, lines 22-23; page 29, line 18 - page 30, line 15.

The computer program product further comprises code for making the module available for use in constructing the supplier's and reseller's web sites, such that, using the same module, the supplier and the reseller web sites may incorporate common information while at the same time being customized. FIG. 1, item 1400; FIG. 5, item 5500; page 9, line 13 - page 10, line 8; page 12, lines 10-20; page 17, lines 9-18; page 23, line 23 - page 24, line 1; page 30, line 16 - page 31, line 4.

VI.   Grounds of Rejection to be Reviewed on Appeal

The following grounds of rejection are to be reviewed:

A.   Claims 17, 18, 25-27, 34, 36, and 38 stand rejected under

35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,913,210 to Call ("Call").

B.   Claims 17, 18, 25-27, 34, 36, and 38 stand rejected under

35 U.S.C. § 103(a) as being unpatentable over Call in view of U.S. Patent

No. 6,141,666 to Tobin ("Tobin").

VII. Argument

A. The Rejection of Claims 17, 18, 25-27, 34, 36, and 38 Under 35 U.S.C. § 102(b) Based on Call Should Be Reversed

1. Claim 17

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). A rejection under § 102 is proper only when the claimed subject matter is <u>identically</u> described or disclosed in the prior art. *In re Arkley*, 455 F.2d 586, 587, 172 USPQ 524, 526 (CCPA 1972). Further, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Finally, "[t]he elements must be arranged as required by the claim." M.P.E.P § 2131; *see In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Call discloses "methods and apparatus for disseminating product information via the Internet." Final Office Action at 2. "The system [of Call] employs a product code translator, which . . . stores cross-references between product codes and the address of Internet resources which provide information about the products designated by the codes." Call, Abstract. The Examiner alleges that "[t]he product code translator . . . is the common module [recited in independent claim 17], which is used by and available for the manufacturers' Internet sites and online resellers." Final Office Action at 2. Appellants respectfully disagree.

Independent claim 17 recites, among other features, "enabling alternative functionality in [a] supplier's web site and in [a] reseller's website using at least one common module containing a first set of information for incorporation into the supplier's website, an alternative second set of information for incorporation into the reseller's website, and a third set of common information for incorporation into both the supplier's and the reseller's website, wherein . . . the first set of information including identifying information relating to a product supplied by the supplier and unique to the supplier, and the second set of information including identifying information relating to the product supplied by the supplier and unique to the reseller." Call fails to disclose at least this claim recitation.

Appellants respectfully submit that the product code translator of Call is not the common module recited in independent claim 17. As explained above, the product code translator of Call "stores cross-references between product codes and the address of Internet resources which provide information about the products designated by the codes." Call, Abstract. "[T]he cross-references are **transferred from participating manufacturers to the product code translator** using a product code registration process. The transferred cross-references specify the universal product codes assigned to the participating manufacturers, such as the U.P.C. and EAN codes widely used in retail stores for barcode scanning at checkout counters. The centrally stored cross-references thus **correlate sets of universal product codes with the Internet addresses where information can be obtained** about products designated by those codes." Call, col. 1, lines 42-51 (emphasis added).

"Utilizing the principles of the invention [disclosed in Call], resellers, potential customers, analysts, service and support personnel, end-users and others can obtain and use detailed, accurate and up-to-date information about any product of interest made available . . . by a participating manufacturer." Call, col. 1, lines 52-56. "The [Call] invention enables the retrieval of information about products from the source of those products, typically the manufacturer, by those who need that information, such as resellers and consumers." Call, col. 2, lines 33-36. "In accordance with the invention, **any person or firm** having access to the Internet and knowing the universal product code for a product **may obtain information** about that product from the participating manufacturer which supplies that product." Call, col. 2, lines 36-40 (emphasis added).

Thus, rather than containing "a first set of information for incorporation into the supplier's website, an alternative second set of information for incorporation into the reseller's website, and a third set of common information for incorporation into both the supplier's and the reseller's website," as recited in independent claim 17, the product code translator of Call contains information (the cross-references) transferred from manufacturers (e.g., suppliers) that are available to any person or firm (e.g., customer or resellers). Using the cross-references, any customer or reseller may look up where information about a product is available (i.e., from which supplier) for any product that the product code translator has cross-references. The resellers or customers may then obtain up-to date information about the product directly from the supplier.

Because the product code translator contains only the information that is available for any person or firm having access to the Internet and knowing the universal product code for a product, the translator does not contain multiple sets of information

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based on where the information is incorporated into. Thus, the product code translator of Call is not the common module "containing a first set of information for incorporation into the supplier's website, an alternative second set of information for incorporation into the reseller's website, and a third set of common information for incorporation into both the supplier's and the reseller's website . . . ," as recited in independent claim 17.

The Examiner also admits that Call fails to teach "specifying unique identifying information, a label, on the manufacturer's and reseller's web-sites." Final Office Action at 3. Thus, as the Examiner correctly observes, Call fails to disclose "the first set of information including identifying information relating to a product supplied by the supplier and unique to the supplier, and the second set of information including identifying information relating to the product supplied by the supplier and unique to the reseller," as recited in independent claim 17.

For at least these reasons, Call fails to disclose the "enabling alternative functionality . . . " feature recited in independent claim 17.

Moreover, independent claim 17 further recites, among other features, "enabling assignment of at least first and second addresses to the module, such that when the module is called in the supplier's website by the first address, the first and third sets of information are caused to be incorporated into the supplier's web site while the second set of information is prevented from being incorporated into the supplier's website, and when the module is called in the reseller's web site by the second address, the second and third sets of information are caused to be incorporated into the reseller's website while the first set of information is prevented from being incorporated into the reseller's website."

Nowhere does Call disclose enabling assignment of "at least first and second addresses to" the product code translator (the alleged common module), and the Examiner has not established that Call discloses such assignment. Although Call discloses that the product code translator contains the cross-references which include Internet addresses where information about a product can be obtained, these addresses are addresses of supplier's websites, not the addresses that can be used to call the product code translator. Thus, there is no assignment of at least first and second addresses to the product code translator.

In addition, even if Call discloses such assignment, a notion that Appellants dispute, Call fails to disclose that "when the [product code translator] is called . . . by the first address, the first and third sets of information are caused to be incorporated into the supplier's web site while the second set of information is prevented from being incorporated into the supplier's website, and when the module is called . . . by the second address, the second and third sets of information are caused to be incorporated into the reseller's website while the first set of information is prevented from being incorporated into the reseller's website," as recited in independent claim 17. As explained above, the product code translator does not contain multiple sets based on where the information is incorporated into. Thus, Call fails to disclose incorporating different sets of information based on which address is used to call the product code translator.

The Examiner alleges that passwords, certificates, or digital signature protection schemes disclosed in Call purportedly teach "provid[ing] access to certain data (sets of information) or to data in certain forms only to authorized requesters (sets of related

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addresses)." Final Office Action at 2. Appellants respectfully submit that the

passwords, certifications, and digital signature protection schemes identified by the

Examiner are used in a product code registration process only to restrict who can

update the cross-references stored in the product code translator. Call, col. 4,

lines 34-64. This has nothing to do with causing particular sets of information to be

incorporated into a particular website. Further, using passwords, certifications, and

digital signature schemes is not the same as using addresses. Passwords,

certifications, and digital signature schemes are at a user level while addresses are at a

website level. For at least these reasons, Call fails to disclose the "enabling assignment

of at least first and second addresses to the module . . . " feature recited in independent

claim 17.

Independent claim 17 further recites "making the module available for use in

constructing the supplier's and reseller's web sites, such that, using the same module,

the supplier and reseller web sites may incorporate common information while at the

same time being customized." Call is related to disseminating product information via

the Internet and has nothing to do with constructing websites. In addition, the Examiner

has not established that Call discloses making product code translator available for use

in constructing the manufacturer's and reseller's web sites. Thus, Call fails to disclose

the "making the module available for use in constructing the supplier's and reseller's

web sites . . . " feature recited in independent claim 17.

For at least these reasons, Call fails to disclose every claim element recited in

independent claim 17 and thus fails to support the § 102(b) rejection of independent

claim 17. Accordingly, the § 102(b) rejection of claim 17 should be reversed.

2. *Claim 25*

Independent claim 25 recites features that are similar to the features recited in independent claim 17. For example, independent claim 25 recites, among other features, "means for enabling alternative functionality in [a] supplier's web site and in [a] reseller's website using at least one common module containing a first set of information for incorporation into the supplier's website, an alternative second set of information for incorporation into the reseller's website, and a third set of common information for incorporation into both the supplier's and the reseller's website, wherein . . . the first set of information identifying information relating to a product supplied by the supplier and unique to the supplier, and the second set of information including identifying information relating to the product supplied by the supplier and unique to the reseller," "means for enabling assignment of at least first and second addresses to the module, such that when the module is called in the supplier's website by the first address, the first and third sets of information are caused to be incorporated into the supplier's web site while the second set of information is prevented from being incorporated into the supplier's website, and when the module is called in the reseller's web site by the second address, the second and third sets of information are caused to be incorporated into the reseller's website while the first set of information is prevented from being incorporated into the reseller's website," and "means for making the module available for use in constructing the supplier's and reseller's web sites, such that, using the same module, the supplier and the reseller web sites may incorporate common information while at the same time being customized."

For reasons similar to those set forth with respect to independent claim 17, Call fails to support the § 102(b) rejection of claim 25. Accordingly, the § 102(b) rejection of claim 25 should be reversed.

3.   Claim 26

Independent claim 26 recites features that are similar to the features recited in independent claim 17. For example, independent claim 26 recites, among other features, "code enabling alternative functionality in [a] supplier's web site and in [a] reseller's website using at least one common module containing a first set of information for incorporation into the supplier's website, an alternative second set of information for incorporation into the reseller's website, and a third set of common information for incorporation into both the supplier's and the reseller's website, wherein the alternative functionality includes displaying identifying information unique to each of the supplier and the reseller, the first set of information including identifying information relating to a product supplied by the supplier and unique to the supplier, and the second set of information including identifying information relating to the product supplied by the supplier and unique to the reseller," "code enabling assignment of at least first and second addresses to the module, such that when the module is called in the supplier's website by the first address, the first and third sets of information are caused to be incorporated into the supplier's web site while the second set of information is prevented from being incorporated into the supplier's website, and when the module is called in the reseller's web site by the second address, the second and third sets of information are caused to be incorporated into the reseller's website while the first set of information is prevented from being incorporated into the reseller's website," and "code for making

the module available for use in constructing the supplier's and reseller's web sites, such that, using the same module, the supplier and the reseller web sites may incorporate common information while at the same time being customized."

For reasons similar to those set forth with respect to independent claim 17, Call fails to support the § 102(b) rejection of claim 26. Accordingly, the § 102(b) rejection of claim 26 should be reversed.

4.   Claim 27

Independent claim 27 recites features that are similar to the features recited in independent claim 17. For example, independent claim 27 recites, among other features, "code enabling alternative functionality in the supplier's web site and in the reseller's website using at least one common module containing a first set of information for incorporation into the supplier's website, an alternative second set of information for incorporation into the reseller's website, and a third set of common information for incorporation into both the supplier's and the reseller's website, wherein the alternative functionality includes displaying identifying information unique to each of the supplier and the reseller, the first set of information including identifying information relating to a product supplied by the supplier and unique to the supplier, and the second set of information including identifying information relating the product supplied by the supplier and unique to the reseller," "code enabling assignment of at least first and second addresses to the module, such that when the module is called in the supplier's website by the first address, the first and third sets of information are caused to be incorporated into the supplier's web site while the second set of information is prevented from being incorporated into the supplier's website, and when the module is called in the reseller's

web site by the second address, the second and third sets of information are caused to be incorporated into the reseller's website while the first set of information is prevented from being incorporated into the reseller's website," and "code for making the module available for use in constructing the supplier's and reseller's web sites, such that, using the same module, the supplier and the reseller web sites may incorporate common information while at the same time being customized."

For reasons similar to those set forth with respect to independent claim 17, Call fails to support the § 102(b) rejection of claim 27. Accordingly, the § 102(b) rejection of claim 27 should be reversed.

5. Claims 18, 34, 36, and 38

Claims 18, 34, 36, and 38 depend from independent claims 17, 25, 26, and 27, respectively. Claims 18, 34, 36, and 38 are allowable by virtue of their dependence from an allowable independent claim. Furthermore, dependent claims 18, 34, 36, and 38 recite further distinctions over Call. For example, claims 18, 34, 36, and 38 recite that "the alternative functionality includes a first payment engine function in the supplier website enabled by the first set of information and an alternative second payment engine function in the reseller website enabled by the second set of information."

The Examiner alleges that "[o]nline supplier and resellers inherently have payment engine functions. Since they are both selling the products in the product translator, they still use the information in the translator. Inherently, manufacturers and resellers will have their name on their own web-site meets the limitation . . . ." Final Office Action at 2.

M.P.E.P. § 2112 makes clear:

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> To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." (internal citations omitted).

In addition, M.P.E.P. § 2112 states:

> In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. (internal citations omitted).

In this case, the Final Office Action fails to provide sufficient evidence from Call, or any extrinsic evidence, that makes clear that the subject matter of claims 18, 34, 36, and 38 is necessarily present in the reference, or that a supplier's or reseller's website necessarily includes a payment engine function. The Final Office Action also fails to present sufficient factual basis and technical reasoning to demonstrate inherency. For example, a supplier's or reseller's website may not necessarily sell products via the Internet and may only market its products by disseminating information about the product via the Internet. This is especially true for manufacturers as many manufacturers may not necessarily sell their products directly via the Internet. Consequently, the Examiner cannot properly infer that a payment engine function is inherently included in a supplier's or reseller's website, and nothing supports the Examiner's inherency allegation regarding the subject matter of claims 18, 34, 36, and 38. Moreover, even assuming that a payment engine function is inherently included in a supplier's or reseller's website, a notion that Appellants dispute, Call fails to disclose

that the payment engine function is enabled by a first set of information or an alternative second set of information.

For at least these additional reasons, Call fails to support the § 102(b) rejection of claims 18, 34, 36, and 38. Accordingly, the § 102(b) rejection of claims 18, 34, 36, and 38 based on Call should be reversed.

B. The Rejection of Claims 17, 18, 25-27, 34, 36, and 38 Under 35 U.S.C. § 103(a) Based on Call and Tobin Should Be Reversed

The rejection of claims 17, 18, 25-27, 34, 36, and 38 under 35 U.S.C. § 103(a) should be reversed because a case for *prima facie* obviousness has not been established. In particular, *prima facie* obviousness has not been established with respect to claims 17, 18, 25-27, 34, 36, and 38 at least because Call and Tobin, taken alone or in combination, fail to teach or suggest all of the features recited in claims 17, 18, 25-27, 34, 36, and 38.

1. Claim 17

The Examiner alleges that "Call shows all of the limitations of the claims except for specifying unique identifying information, a label, on the manufacturer's and reseller's web-sites. As explained above with respect to the § 102(b) rejection of claim 17, Call fails to disclose, not only the "specifying . . . " feature as observed by the Examiner, but also the feature "enabling alternative functionality . . . ," the feature "enabling assignment of at least first and second addresses to the module . . . ," and the feature "making the module available for use in constructing the supplier's and reseller's web sites . . . " recited in independent claim 17.

Tobin is directed to "method and system for customizing marketing services on networks communicating with hypertext tagging conventions." Tobin, Title. "Tobin teaches a system for customizing marketing services on networks communicating with hypertext tagging convention." Final Office Action at 3. "FIGS 21C, 22-28, 29A-29B, and 30 show private label Web site pages that correlate to the PC Flowers & Gifts Web site pages depicted in FIGS. 1C-10 which are customized solely with the Homearts brand." Tobin, col. 4, lines 57-60. The Examiner alleges that "[t]his teaches unique identifying information on web-sites in order to promote branding." Final Office Action at 3.

Even if one were to assume hypothetically that Tobin teaches "unique identifying information on web-sites in order to promote branding," as alleged by the Examiner, Tobin fails to teach "enabling alternative functionality in [a] supplier's web site and in [a] reseller's website using at least one common module containing a first set of information for incorporation into the supplier's website, an alternative second set of information for incorporation into the reseller's website, and a third set of common information for incorporation into both the supplier's and the reseller's website . . . ," "enabling assignment of at least first and second addresses to the module, such that when the module is called in the supplier's website by the first address, the first and third sets of information are caused to be incorporated into the supplier's web site while the second set of information is prevented from being incorporated into the supplier's website, and when the module is called in the reseller's web site by the second address, the second and third sets of information are caused to be incorporated into the reseller's website while the first set of information is prevented from being incorporated into the reseller's

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website," and "making the module available for use in constructing the supplier's and reseller's web sites, such that, using the same module, the supplier and reseller web sites may incorporate common information while at the same time being customized," as recited in independent claim 17. Thus, Tobin fails to cure all of the deficiencies of Call.

For at least these reasons, Call and Tobin, taken alone or in combination, fail to teach or suggest all of the features recited in independent claim 17. Accordingly, the § 103 rejection of claim 17 based on Call and Tobin should be reversed.

2. Claim 25

Independent claim 25 recites features that are similar to the features recited in independent claim 17. For example, independent claim 25 recites, among other features, "means for enabling alternative functionality in [a] supplier's web site and in [a] reseller's website using at least one common module containing a first set of information for incorporation into the supplier's website, an alternative second set of information for incorporation into the reseller's website, and a third set of common information for incorporation into both the supplier's and the reseller's website, wherein . . . the first set of information identifying information relating to a product supplied by the supplier and unique to the supplier, and the second set of information including identifying information relating to the product supplied by the supplier and unique to the reseller," "means for enabling assignment of at least first and second addresses to the module, such that when the module is called in the supplier's website by the first address, the first and third sets of information are caused to be incorporated into the supplier's web site while the second set of information is prevented from being incorporated into the

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supplier's website, and when the module is called in the reseller's web site by the second address, the second and third sets of information are caused to be incorporated into the reseller's website while the first set of information is prevented from being incorporated into the reseller's website," and "means for making the module available for use in constructing the supplier's and reseller's web sites, such that, using the same module, the supplier and the reseller web sites may incorporate common information while at the same time being customized."

For reasons similar to those set forth with respect to independent claim 17, Call and Tobin, taken alone or in combination, fail to support the § 103 rejection of claim 25. Accordingly, the § 103 rejection of claim 25 based on Call and Tobin should be reversed.

3. Claim 26

Independent claim 26 recites features that are similar to the features recited in independent claim 17. For example, independent claim 26 recites, among other features, "code enabling alternative functionality in [a] supplier's web site and in [a] reseller's website using at least one common module containing a first set of information for incorporation into the supplier's website, an alternative second set of information for incorporation into the reseller's website, and a third set of common information for incorporation into both the supplier's and the reseller's website, wherein the alternative functionality includes displaying identifying information unique to each of the supplier and the reseller, the first set of information including identifying information relating to a product supplied by the supplier and unique to the supplier, and the second set of information including identifying information relating to the product supplied by the

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supplier and unique to the reseller," "code enabling assignment of at least first and second addresses to the module, such that when the module is called in the supplier's website by the first address, the first and third sets of information are caused to be incorporated into the supplier's web site while the second set of information is prevented from being incorporated into the supplier's website, and when the module is called in the reseller's web site by the second address, the second and third sets of information are caused to be incorporated into the reseller's website while the first set of information is prevented from being incorporated into the reseller's website," and "code for making the module available for use in constructing the supplier's and reseller's web sites, such that, using the same module, the supplier and the reseller web sites may incorporate common information while at the same time being customized."

For reasons similar to those set forth with respect to independent claim 17, Call and Tobin, taken alone or in combination, fail to support the § 103 rejection of claim 26. Accordingly, the § 103 rejection of claim 26 based on Call and Tobin should be reversed.

4. Claim 27

Independent claim 27 recites features that are similar to the features recited in independent claim 17. For example, independent claim 27 recites, among other features, "code enabling alternative functionality in the supplier's web site and in the reseller's website using at least one common module containing a first set of information for incorporation into the supplier's website, an alternative second set of information for incorporation into the reseller's website, and a third set of common information for incorporation into both the supplier's and the reseller's website, wherein the alternative

functionality includes displaying identifying information unique to each of the supplier

and the reseller, the first set of information including identifying information relating to a

product supplied by the supplier and unique to the supplier, and the second set of

information including identifying information relating the product supplied by the supplier

and unique to the reseller," "code enabling assignment of at least first and second

addresses to the module, such that when the module is called in the supplier's website

by the first address, the first and third sets of information are caused to be incorporated

into the supplier's web site while the second set of information is prevented from being

incorporated into the supplier's website, and when the module is called in the reseller's

web site by the second address, the second and third sets of information are caused to

be incorporated into the reseller's website while the first set of information is prevented

from being incorporated into the reseller's website," and "code for making the module

available for use in constructing the supplier's and reseller's web sites, such that, using

the same module, the supplier and the reseller web sites may incorporate common

information while at the same time being customized."

For reasons similar to those set forth with respect to independent claim 17, Call

and Tobin, taken alone or in combination, fail to support the § 103 rejection of claim 27.

Accordingly, the § 103 rejection of claim 27 based on Call and Tobin should be

reversed.

     5.   *Claims 18, 34, 36, and 38*

Claims 18, 34, 36, and 38 depend from independent claims 17, 25, 26, and 27,

respectively. Claims 18, 34, 36, and 38 are allowable by virtue of their dependence

from an allowable independent claim. Furthermore, as explained above with respect to

the 102(b) rejection of claims 18, 34, 36, and 38, the dependent claims recite further distinctions over Call. Tobin fails to disclose the further distinctions, and thus fails to cure the further deficiencies of Call. For at least these additional reasons, Call and Tobin, taken alone or in combination, fail to support the § 103 rejection of claims 18, 34, 36, and 38. Accordingly, the § 103 rejection of claims 18, 34, 36, and 38 based on Call and Tobin should be reversed.

VIII.   <u>Conclusion</u>

For the reasons given above, claims 17, 18, 25-27, 34, 36, and 38 are patentable over the cited references. The Board is therefore respectfully requested to reverse the outstanding rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a), so that those pending claims may be allowed.

To the extent any additional extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due which are not enclosed herewith, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 8, 2008

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IX.   Claims Appendix

17.   A method for enabling components of a supplier's website to be integrated into a website of a reseller, the method comprising:

enabling alternative functionality in the supplier's web site and in the reseller's website using at least one common module containing a first set of information for incorporation into the supplier's website, an alternative second set of information for incorporation into the reseller's website, and a third set of common information for incorporation into both the supplier's and the reseller's website, wherein the alternative functionality includes displaying identifying information unique to each of the supplier and the reseller, the first set of information including identifying information relating to a product supplied by the supplier and unique to the supplier, and the second set of information including identifying information relating to the product supplied by the supplier and unique to the reseller;

enabling assignment of at least first and second addresses to the module, such that when the module is called in the supplier's website by the first address, the first and third sets of information are caused to be incorporated into the supplier's web site while the second set of information is prevented from being incorporated into the supplier's website, and when the module is called in the reseller's web site by the second address, the second and third sets of information are caused to be incorporated into the reseller's website while the first set of information is prevented from being incorporated into the reseller's website and

making the module available for use in constructing the supplier's and reseller's web sites, such that, using the same module, the supplier and the reseller web sites may incorporate common information while at the same time being customized.

18.   The method of claim 17, wherein the alternative functionality includes a first payment engine function in the supplier website enabled by the first set of information and an alternative second payment engine function in the reseller website enabled by the second set of information.

25.   A system for enabling components of a supplier's web site to be integrated into a website of a reseller, the system comprising:

means for enabling alternative functionality in the supplier's web site and in the reseller's website using at least one common module containing a first set of information for incorporation into the supplier's website, an alternative second set of information for incorporation into the reseller's website, and a third set of common information for incorporation into both the supplier's and the reseller's website, wherein the alternative functionality includes displaying identifying information unique to each of the supplier and the reseller, the first set of information identifying information relating to a product supplied by the supplier and unique to the supplier, and the second set of information including identifying information relating to the product supplied by the supplier and unique to the reseller;

means for enabling assignment of at least first and second addresses to the module, such that when the module is called in the supplier's website by the first

address, the first and third sets of information are caused to be incorporated into the supplier's web site while the second set of information is prevented from being incorporated into the supplier's website, and when the module is called in the reseller's web site by the second address, the second and third sets of information are caused to be incorporated into the reseller's website while the first set of information is prevented from being incorporated into the reseller's website and

means for making the module available for use in constructing the supplier's and reseller's web sites, such that, using the same module, the supplier and the reseller web sites may incorporate common information while at the same time being customized.

26.   A system for enabling components of a supplier's web site to be integrated into a website of a reseller, the system comprising:

at least one memory including

code enabling alternative functionality in the supplier's web site and in the reseller's website using at least one common module containing a first set of information for incorporation into the supplier's website, an alternative second set of information for incorporation into the reseller's website, and a third set of common information for incorporation into both the supplier's and the reseller's website, wherein the alternative functionality includes displaying identifying information unique to each of the supplier and the reseller, the first set of information including identifying information relating to a product supplied by the supplier and unique to the supplier, and the second set of information including identifying information relating to the product supplied by the supplier and unique to the reseller,

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code enabling assignment of at least first and second addresses to the module, such that when the module is called in the supplier's website by the first address, the first and third sets of information are caused to be incorporated into the supplier's web site while the second set of information is prevented from being incorporated into the supplier's website, and when the module is called in the reseller's web site by the second address, the second and third sets of information are caused to be incorporated into the reseller's website while the first set of information is prevented from being incorporated into the reseller's website, and

code for making the module available for use in constructing the supplier's and reseller's web sites, such that, using the same module, the supplier and the reseller web sites may incorporate common information while at the same time being customized; and

at least one processor for executing said code.

27.   A computer program product for enabling components of a supplier's web site to be integrated into a website of a reseller, the computer program product comprising:

code enabling alternative functionality in the supplier's web site and in the reseller's website using at least one common module containing a first set of information for incorporation into the supplier's website, an alternative second set of information for incorporation into the reseller's website, and a third set of common information for incorporation into both the supplier's and the reseller's website, wherein the alternative functionality includes displaying identifying information unique to each of the supplier

and the reseller, the first set of information including identifying information relating to a product supplied by the supplier and unique to the supplier, and the second set of information including identifying information relating the product supplied by the supplier and unique to the reseller;

code enabling assignment of at least first and second addresses to the module, such that when the module is called in the supplier's website by the first address, the first and third sets of information are caused to be incorporated into the supplier's web site while the second set of information is prevented from being incorporated into the supplier's website, and when the module is called in the reseller's web site by the second address, the second and third sets of information are caused to be incorporated into the reseller's website while the first set of information is prevented from being incorporated into the reseller's website; and

code for making the module available for use in constructing the supplier's and reseller's web sites, such that, using the same module, the supplier and the reseller web sites may incorporate common information while at the same time being customized.

34.   The system of claim 25, wherein the alternative functionality includes a first payment engine function in the supplier's website enabled by the first set of information and an alternative second payment engine function in the reseller's website enabled by the second set of information.

36.   The system of claim 26, wherein the alternative functionality includes a first payment engine function in the supplier's website enabled by the first set of

information and an alternative second payment engine function in the reseller's website enabled by the second set of information.

38.   The computer program product of claim 27, wherein the alternative functionality includes a first payment engine function in the supplier's website enabled by the first set of information and an alternative second payment engine function in the reseller's website enabled by the second set of information.

X.   Evidence Appendix

None

XI.   Related Proceedings Appendix

None